

REMARKS

Claims 1-19 were originally pending, and subject to restriction. Claims 9-16, 18, and 19 have been withdrawn without prejudice, and claims 1-8 and 17 remained pending. The Office Action rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by an article cited by Applicant entitled “Reducing I/O Demand in Video-On-Demand Storage Servers,” referred to hereinafter as the “Golubchik et al.” Applicant appreciates the Examiner’s indication that claims 2-8 and 17 are allowed. No claims have been amended, cancelled, or added to the application. Favorable reconsideration and allowance of this application is respectfully requested in light of the following remarks.

The Office Action rejected claim 1 as being anticipated by Golubchik et al. As previously addressed in the Response of December 13, 2004, Golubchik et al. discloses an approach to reducing the I/O demand on a storage server while increasing the number of user content requests which can be served simultaneously. See pg. 26, ¶12. In particular, Golubchik et al. teaches a system and method referred to as “adaptive piggybacking,” which Golubchik et al. defines as “a policy for *altering display rates* of requests in progress for the purpose of merging their respective I/O streams into a single stream.” Pg. 26, ¶17 (*emphasis added*). In particular, Golubchik et al. the ability to “dynamically *time compress* or *time expand*” video data delivered to a requesting client. Pg. 27, ¶13 (*emphasis in original*).

On the other hand, claim 1 explicitly calls for “receiving at a client a composite of the first transmission and data of the target transmission, *neither of which is time-distorted.*” (*Emphasis added*). As shown above, Golubchik et al. teaches a system and method of “altering display rates” by delivering data that includes time compression or time expansion and; thus, Golubchik et al. actually teaches that data transmissions *are* time-distorted. Therefore, Golubchik et al. does not teach or suggest data transmissions that are *not* time-distorted, as claimed. The Office Action apparently recognized this distinction but did not accord such any patentable weight because “the claims fail to recite the meaning of time-distortion.”

Applicant believes this is improper because “the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification.” MPEP §2111.01 citing *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Therefore, under MPEP §2111.01 and the plethora of substantive case law on point, words or phrases need not be defined in the claims to be accorded patentable weight, as the Office Action purported. Rather, words or phrases in the claims must be

attributed their plain meaning as one of ordinary skill in the art would understand the word or phrase within the context of the claim or, if specifically defined in the specification, the words or phrases must be attributed the definition found in the specification. See MPEP §2111.01 and *Phillips v. AWH Corp.*, Fed. Cir., No. 03-1269, 7/12/05 (stating, only days ago, that the Federal Circuit has turned away from prior case law suggesting that dictionaries may be a better starting point for determining the “ordinary meaning” of a claim in favor of interpreting the claim based on the written description and prosecution history.). In the case at hand, Applicant believes that the meaning of “time-distorted” is clear (1) based on the plain meaning one of ordinary skill in the art would attribute the word within the context of the claim as well as (2) based on the use of “time-distorted” found in the specification.

That is, one of ordinary skill in the art would interpret “time-distorted” as used in claim 1 to mean that the data transmission would not cause a playback rate that is altered from its original or normal rate. That is, the data is not altered to cause accelerated or decelerated (i.e. time-distorted) playback.

Nevertheless, even if the position is maintained that one of ordinary skill would not understand the plain meaning of “time-distorted,” Applicant believes the specification clearly provides adequate context to understand the term. In fact, the specification of the present application specifically distinguishes the present invention from conventional Piggybacking techniques of the type disclosed by Golubchik et al. at least in part based on the definition of “time-distorted” data. For instance, the specification describes piggybacking as transmitting an *accelerated* (or *decelerated*) data stream at a rate higher (or lower) than the original data stream. In the case of video files, this is achieved by configuring the data to adjust the display rate of the video files so that the video plays faster (or slower) than the original video play rate. See pg. 3, ll. 24-27 and Fig. 2. Applicant accordingly refers to the Piggybacking technique, which employs accelerated time in client playback, as requiring “time-distorted” data. See pg 4, ll. 27-28. The specification further recognizes that the time distortions associated with the accelerated (or decelerated) streams in a piggybacking system may be unacceptable. See pg. 4, ll. 1-2. Therefore, the present invention provides a system that enables two streams to merge while, at the same time, ensuring that neither stream is “time-distorted,” as explained in detail in the specification. See pg. 12, ll. 8-16; pg. 13; pg. 15, ll. 13-19; and pg. 16, ll. 1-4.

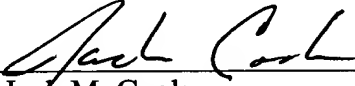
For at least these reasons, all of the elements of claim 1 and, in particular, the term “non-distorted,” must be attributed patentable consideration. Accordingly, because

Golubchik et al. fails to teach or suggest each element of claim 1, Applicant asserts that claim 1 is patentably distinct from the art of record.

Applicant therefore respectfully asserts that all rejections presented in the Office Action have been overcome. Accordingly, the application is in condition for allowance, and timely issuance of a Notice of Allowance is respectfully requested. As always, the Examiner is invited to contact the undersigned at the telephone number appearing below if such would advance the prosecution of this application.

Respectfully submitted,

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